

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY CARNEY,

Plaintiff,

Case No. 1:05-CV-252

v.

HON. GORDON J. QUIST

JOHN CHRISTIANSEN, et al.,

Defendants.

ORDER ADDRESSING REPORT AND RECOMMENDATION

The Court has before it the Plaintiff's objections to the Magistrate Judge's Report and Recommendation issued on May 23, 2006, in which the magistrate judge recommended that the Court dismiss the Plaintiff's complaint under the total exhaustion rule set forth in *Jones Bey v. Johnson*, 407 F.3d 801 (6th Cir. 2005). After the report and recommendation was issued, the Supreme Court determined that dismissal of a prisoner's complaint is not proper when it contains both exhausted and unexhausted claims. *See Jones v. Bock*, --- U.S. ---, 127 S. Ct. 910 (2007). In light of the Supreme Court's ruling, and because the complaint contains both exhausted and unexhausted claims, the Court concludes that the report and recommendation should be vacated and remanded for reconsideration by the magistrate judge under the standard set forth in *Jones v. Bock*.

IT IS HEREBY ORDERED that the Report and Recommendation issued May 23, 2006 (docket no. 76), is **VACATED**.

IT IS SO ORDERED.

Dated: June 28, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE